I. Request to Withdraw Improper Finality of Office Action

MPEP Section 706.07(a) states that "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by **applicant's amendment of the claims** nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)."

In the Amendment mailed on August 13, 2002, Applicant did not amend the claims in the subject Application. Further, Applicant did not submit an information disclosure statement filed during the prescribed period. The current Office Action stated that it was made final because of "Applicant's amendment", which has been demonstrated to be non-existent.

In a telephone interview with the Examiner, the Examiner seemed to indicate that the Declaration under 1.131 was being considered an amendment to the claims for purposes of Section 706.07(a). This interpretation is unsupported by the MPEP, contrary to any accepted understanding of the meaning of the phrase "amendment of the claims," and therefor an arbitrary and capricious application of the controlling regulations for the United States Patent & Trademark Office.

Further, there was no indication in the Final Rejection that the Declaration had overcome the Alcorn reference. As noted above, Alcorn was still utilized in the Final Rejection. Applicant presented an argument in his response which showed how the claims distinguished over Alcorn. Accordingly, as a new ground of rejection was presented in the Final Rejection without amendment to the claim, the finality of the Office Action is premature, as there is no evidence that the Declaration was considered by the USPTO.

In consideration of these arguments, it is respectfully requested that the holding of finality of the Office Action be withdrawn.

II Traversal of the Rejection with Declaration under 37 CFR 1.131

Applicant attached to the Response mailed on August 13, 2002, a Declaration under 37

CFR Section 1.131 which indicates that the present invention was invented prior to the effective date of Alcorn. Accordingly, this Declaration should remove Alcorn as a reference which may be applied against the present claims. Therefore, the rejection of Claims 14 -17 and 31 - 34 should be obviated, and these claims should be allowable.

III Traversal of the Rejection over the Cited Art

Applicant also submits that the pending claims patentably distinguish over the cited art. For example, Claim 1 recites "building a program ... to represent said data file". Relative to this subject matter, a passage from Column 13, lines 62 - 67 of Tabloski is cited. This passage apparently has nothing to do with building a program to represent a data file. Rather, the passage describes that a programmer developing a program "can customize the instances of components and modules by providing information through dialog boxes that are associated with respective icons, which will later be used to control generation of the high-level language program by the program composition module 33...for an icon representing a file containing input data to be processed,...the program developer can provide information such as a file name, whether records in the file are sorted...." No program is built to represent a data file. The program composition module 33 is not a program which represents a data file. Rather, as per Column 6, lines 1 - 15, the program composition module 33 is employed to generate the program (such as a C++ program).

A passage from Column 20, lines 30 - 35 is cited against the passage of Claim 1 which recites "compiling the program [which represents the data file] ... into a software executable". In contrast, the cited passage merely states that "after the program composition module 33 has generated the high-level program 35, the compiler 34 compiles the executable program..." There is no description that this program 35 was created in a prior step to represent a **data file.** Compiling programs in general is certainly not new. But the first two steps of Claim 1 are certainly not taught, suggested or disclosed by Tabloski. How the components applied to Claim

1 from this passage relate to the components applied against Claim 1 from Column 13 is unclear.

Similarly, relative to the third step of Claim 1, the passage from Column 20, lines 30 - 35 is cited once again. This passage goes on to say that the executable program may "be executed by the parallel computer 25..." There is no discussion of a data file. Accordingly, it does not disclose the subject matter of the third step of Claim 1, which recites "running the executable to generate the data file." No data file is generated in the cited passage of Tabloski.

Accordingly, Applicant submits that Claim 1 patentably distinguishes over Tabloski.

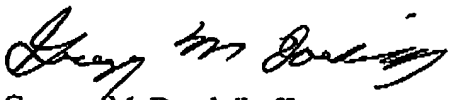
Independent Claims 18 and 35 were rejected for the same reasons as Claim 1. Accordingly, Applicant submits that these claims also patentably distinguish over the cited art for the same reasons as Claim 1. Further, it follows that the dependent claims all patentably distinguish over the art.

Applicant notes that the rejection of Claims 14 -17 and 31 - 34, which was based on a rejection of Claim 1 over Alcorn, is not addressable in this Response, as Claim 1 was not employed in the Final Office Action to reject Claim 1.

IV. Summary

Applicant has presented technical explanations and arguments fully supporting his position that the pending claims contain subject matter which is not taught, suggested or disclosed by the cited art, and have demonstrated that Alcorn is not effective as a reference against the present claims. Accordingly, Applicant submits that the present Application is in a condition for Allowance. Reconsideration of the claims and a Notice of Allowance are earnestly solicited.

Respectfully submitted,



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